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OFFICE OF PETITIONS

In re Application of
Carlos N. Mendes
Application No. 09/028,187
Filed: February 23, 2998
Attorney Docket No. 10646-007

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ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 9, 2004 and supplemented on January 18, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1).

A final Office action was mailed to applicant on March 30, 1999, which set a three-month shortened statutory period for reply. Although a continuation-in-part application was filed as a reply on August 20, 1999, no extensions of time under the provisions of 37 CFR 1.136 were obtained. In view thereof, the application became abandoned on July 1, 1999.

There is some discrepancy as to applicant's true intentions with regards to this application. Petitioner has filed an amendment with the petition as a reply to the outstanding office action. In doing this, it appears that applicant wants to continue the prosecution of this application. However, from the file record, as well as the statements presented in the petition, it appears that applicant's intention was to expressly abandon this application in favor of continuation-in-part application 09/377,936 filed on August 20, 1999.

Upon the filing of a renewed petition, petitioner should state that the application is abandoned in favor of aforementioned continuation-in-part application, in order to establish continuity between this application and the child application. Otherwise, continuity between the present application and subsequent applications do not exist and applicant cannot claim priority in the subsequent applications to this application.

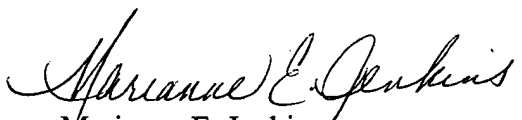
Further correspondence with respect to this matter should be addressed as follows:

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The centralized facsimile number is (703) 872-9306.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223


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for Patent Examination Policy